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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Matthew Gonzales,
Defendant Below, Petitioner

vs) No. 20-0658 (Kanawha County 20-AA-22)

The Board of Education of Cabell County,
Plaintiff Below, Respondent

MEMORANDUM DECISION

Petitioner Matthew Gonzales, by counsel Abraham J. Saad, appeals the July 22, 2020, order of the Circuit Court of Kanawha County that reversed the order of the West Virginia Public Employees Grievance Board that granted petitioner's grievance and reinstated him as a teacher, and upheld respondent The Board of Education of Cabell County's (the "Board of Education's") termination of petitioner's employment as a teacher. Respondent, by counsel Howard E. Seufer, Jr. and Joshua A. Cottle, responds in support of the circuit court's order. Petitioner filed a reply.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the Rules of Appellate Procedure.

Petitioner Matthew Gonzales worked for respondent Board of Education from 2006 to 2014 as a teacher. However, in 2014, he was promoted to the position of assistant principal at Huntington Middle School. On December 5, 2017, Cabell County School Superintendent Ryan Saxe met with petitioner, petitioner's principal, and second assistant principal to address various concerns about petitioner's performance. The discussion at the meeting was memorialized in a letter dated December 15, 2017. The letter addressed the fact that (1) when petitioner met with students in his office, he closed and locked the door; (2) during school hours, he was found in his office with the door locked, the lights out, and the window in his office door covered; (3) he failed to respond to repeated attempts to reach him by phone, radio calls, or by knocking on his office door for an extended period of time; (4) he had students sign a statement providing that they would not discuss what occurred during their meetings with him; (5) students had expressed to school staff that petitioner made them feel uncomfortable; and (6) petitioner had reached into students' pockets to take their cell phones. The letter further provided that:

> [Y]our behavior has continued to raise suspicion among several co-workers. . . . [T]here is a negative perception that is undermining your ability to be an effective leader . . . . Your ability to be an effective leader is highly contingent upon your ability to conduct yourself in that manner that doesn't continually bring suspicion to [i]nappropriate activity.
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> [T]his is not the first time an issue has been brought forward regarding your behavior. . . . [Y]our supervising principal formerly . . . stated, "A pattern has been established" . . . "the next time you are accused of this behavior" [he] would "recommend that you go before the superintendent." Therefore, . . . you are hereby directed that when you meet with any student in an office or room, the door is not to be locked, the lights are not to be turned off, you are not to cover any window, and you are not to request that the student write or sign a statement about not discussing what occurred. . . .
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> You are also directed that at any time a staff member attempts to contact you while you are in your office via repeated phone call, two-way radio, knocking on your door, or any other method of attempted contact with you, you shall make every attempt to respond to them in a manner that acknowledges the attempted communication as it could be a situation requiring your immediate attention. You shall not ignore the attempted communication for extended periods of time.
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> Failure on your part to comply with these requirements, or any effort to circumvent them, may result in disciplinary action that affects your contract with Cabell County Schools.

Early in January of 2018, the administrative assistant of secondary schools and petitioner's principal met with petitioner to discuss other complaints against petitioner including his failure to respond to student discipline referrals and radio calls, and his general unavailability. The December 15, 2017, letter was reviewed line by line. Those present also addressed petitioner's refusal to be the sole teacher in the gym monitoring students as they entered the school in the morning. Petitioner claimed (1) he would not enter the gym if he was the sole employee present due to the contents of the December 15, 2017, letter; (2) he observed the students from the gym's doorway; and (3) he was always vigilant in his duties. The administrative assistant of secondary schools responded that being alone in his office with a student behind a locked door was very different than being the sole employee in a gym filled with hundreds of students.

Later in January of 2018, petitioner, his West Virginia Education Association representative, the superintendent of schools, the assistant superintendent of schools, and the Board of Education's counsel discussed petitioner's failure to respond to a request from the school secretary about a student fight.

On January 30, 2018, the superintendent sent petitioner a formal reprimand for petitioner's failure to (1) use his assigned office even though he had been told to do so; and (2) respond to the school secretary's inquiry about the student fight referenced above. The superintendent directed petitioner to maintain a presence in his office and in the sixth-grade hall.

In March of 2018, a substitute principal began working at the Huntington Middle School when the regular principal went on leave. That same month, the substitute principal could not locate petitioner and later determined that he had taken a ninety-minute lunch break. The substitute principal conferred with the principal and verified that petitioner's work schedule afforded only a one-hour lunch break and petitioner had, therefore, exceeded his allotted time. Also in March of 2018, the substitute principal arrived at the school's gym at 7:10 a.m. and did not find petitioner or the other assistant principal there, although both were required to be there to monitor the students arriving at the start of the school day. The substitute principal radioed petitioner and the other assistant principal to come to the gym. Petitioner did not respond; however, the other assistant principal arrived immediately. When petitioner finally did arrive, he again refused to enter the gym and, instead, stood in the doorway claiming that the December 15, 2017, letter precluded him from being alone in the gym with students. As noted above, it was previously explained to petitioner that the prohibition against being alone with a student did not apply to his supervision duties in the gym.

During a March 14, 2018, student walkout, the substitute principal instructed petitioner and the other assistant principal to report to a courtyard to monitor the students during the walkout. Rather than go into the courtyard, petitioner stood inside the doorway to the courtyard. When the substitute principal again instructed petitioner to go into the courtyard, petitioner refused. The substitute principal notified the Board of Education of this issue. Thereafter, the superintendent recommended that petitioner be dismissed from his assistant principal position due to his continued insubordination.

On March 23, 2018, petitioner failed to report for cafeteria duty. The substitute principal radioed petitioner instructions that he report, but petitioner did not respond. The substitute principal later met with petitioner and asked why he failed to respond to her radio call. Petitioner replied that he was on the phone with legal counsel. The substitute principal reminded petitioner that he was required to report for lunch duty and that they had discussed the same problem the week before. Respondent replied that he could use the cameras in the lunchroom to monitor students from his office. Petitioner then left the meeting without being excused, telling the substitute principal that if she wished to speak with him again, she should speak with his representative. Respondent notes that petitioner's office was on a different floor and some distance from the cafeteria, and it was concerned about student safety.

Petitioner argues that the school's regular principal did not observe any misconduct on petitioner's part and that only the substitute principal claimed misconduct. Petitioner avers that the substitute principal was not aware that petitioner had an arrangement with the regular principal that allowed him to leave the premises during his lunch hour. Petitioner admits that he may have missed a radio call while he was out of the building. Petitioner also states that the regular principal knew that petitioner signed out of school after the first lunch period for medical reasons and that he covered his office window so that he would not be seen administering medicine to himself during the school day. Petitioner claims that once he was no longer able to cover the window in his office door, he left the school building to administer his medication with the regular principal's permission. Petitioner further contends that the school did not have a sign in/sign out policy and that some employees used the sign-out book improperly. Finally, petitioner states that, at his

grievance hearing, a substitute teacher acknowledged the inconsistent use of the school's sign in/sign out sheets.

Thereafter, the superintendent suggested that petitioner be demoted from assistant principal to the position of classroom teacher. The Board of Education unanimously approved that suggestion. On May 14, 2018, petitioner received a letter from the superintendent demoting him from assistant principal to a teaching position. The letter provided the following reasons for the demotion: (1) petitioner refused to enter the gym to monitor students; (2) petitioner continued to fail to respond to radio calls or to promptly respond to radio calls; (3) petitioner reported late for gym duty on March 12, 2018; (4) petitioner failed to sign in and out of the school during the work day and, therefore, the office staff did not know when he was in the building; (5) on March 14, 2018, petitioner three times refused to go into the courtyard to monitor students during the walkout; and (6) on March 23, 2018, petitioner failed to report for cafeteria duty.

On May 25, 2018, petitioner filed his first grievance, contesting the Board of Education's decision to demote him to a classroom teacher (the "demotion grievance").

During the 2018-2019 school year, while petitioner's demotion grievance was pending, he worked as a substitute classroom teacher at Barboursville Middle School from August 13, 2018, to October 2, 2018, without incident. Petitioner was then assigned to work as a substitute teacher at Huntington High School in the "recovery classroom"[1] beginning on October 3, 2018. Petitioner contends that two or three days into his assignment at Huntington High School he noticed he was being observed by the principal and other school administrators. For example, on October 5, 2018, petitioner was told that he was observed reading a non-school-related book during class time and failing to circulate among the students as they worked on their computers. On October 12, 2018, petitioner participated in a meeting regarding a student's accommodation plan at which petitioner was directed to document his participation by signing a certain document. However, instead of signing his own name to the document, he signed "Duncan," the last name of the teacher for whom he was substituting. School administration asked petitioner to sign his own name. Petitioner eventually complied. On October 24, 2018, a professional learning/faculty senate day, petitioner did not attend the first session of a four-session training day because he did not receive notice of the training. The mistake was soon realized, and the assistant vice-principal found petitioner and informed him that he should attend the remaining three sessions. However, petitioner did not attend the second or third session. In response, respondent's Executive Director of Secondary Schools, who happened to be at the elementary school, went to petitioner's classroom and knocked on the door several times, but received no answer. The executive director therefore used his key to open the door and found petitioner inside. The executive director told petitioner that he needed to attend the training. Petitioner responded that he needed a "legal day" despite the fact that he had not requested such a day. Thereafter, petitioner made an appearance at the last of the four training sessions. However, he left soon after he arrived when he realized that the iPad used by the presenter contained a camera. Petitioner later said he felt uncomfortable in the session.

[1] Students in the "recovery classroom" use computer-based learning to recover class credits they failed to previously obtain.

On or around November 1, 2018, the superintendent suspended petitioner and recommended that the Board of Education terminate his employment. In a letter from the Board of Education to petitioner, the Board alleged that petitioner caused it to use unnecessary resources and that petitioner was unreasonably difficult during his four weeks at Huntington High School because he: (1) did not timely complete his Acceptable Use Policy; (2) signed "Duncan" on the attendance form for a meeting on a student's accommodation plan rather than his own name which was required on the form; (3) was found reading a book during class time; and (4) failed to attend a training on a professional learning day. Following an evidentiary hearing, the Board of Education accepted the superintendent's recommendation, ratified petitioner's unpaid suspension from October 30, 2018, through December 4, 2018, and terminated his contract effective December 5, 2018.

On December 12, 2018, petitioner filed his second or "contract termination" grievance directly to level three of the grievance process protesting his suspension and the termination of his employment as a teacher. The record from petitioner's first grievance (regarding his demotion from assistant principal to teacher) was made part of the record in this second grievance.

Regarding petitioner's demotion grievance, the Grievance Board, on September 27, 2019, issued its level three decision upholding petitioner's demotion from assistant principal to a teaching position. Petitioner appealed that decision to the circuit court which upheld the Grievance Board's decision. Petitioner did not appeal the circuit court's decision to this Court.

As for petitioner's termination grievance, an administrative law judge ("ALJ"), following an evidentiary hearing, returned a December 18, 2020, decision reversing the termination of petitioner's teaching contract. The ALJ explained that the record in petitioner's demotion grievance "will be considered part of the record in this [termination] grievance." Nevertheless, the ALJ, without citation to any authority, held that neither he nor the Board of Education could consider petitioner's actions prior to his demotion in determining whether to terminate petitioner's employment. The ALJ also held that

> when grounds for a school employee's dismissal included charges relating to conduct that is deemed correctable, the board of education must establish that it complied with the provisions of the WVDE Policy requiring it to inform the employee of his deficiencies and afford him a reasonable period to improve. *Mason County Bd. of Educ. v. State Supt. of Schools*, 165 W. Va. 732, 739, 272d 435, 439 (1980) . . . . [The board of education] has failed to establish by a preponderance lawful justification for its disciplinary action.
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> . . . .
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> To the extent that [petitioner's] performance was unsatisfactory, [respondent] failed to prove that [petitioner's] conduct was not correctable. As a full-time teacher, [petitioner] is entitled to an opportunity to improve. *See* W. Va. Code § 18A-2-12A; W. Va. Code St. R. § 126-141-1 et seq.

Accordingly, the ALJ ordered that petitioner be reinstated as a teacher with back pay, interest, seniority, and benefits.

Respondent appealed the ALJ's decision to the circuit court under West Virginia Code § 6C-2-5. Following oral argument, the circuit court, by order entered July 22, 2020, reversed the ALJ's decision on the ground that it was clearly wrong. Specifically, the circuit court found that the Board of Education met its burden of proof that petitioner, while serving as a teacher, was insubordinate and willfully neglected his duties. The court noted that petitioner neglected his duties when (1) he was found reading a book in class as opposed to circulating among the students; (2) he signed someone else's name to a student's accommodation plan when he knew or should have known his signature was required; (3) he ignored the executive director's knock on his door; and (4) he refused to join the rest of the faculty in attending professional development training. The court also found that the superintendent and the Board of Education reasonably concluded that petitioner's prospects for rehabilitation were poor because (1) he continued to intentionally defy authority and to neglect his job duties, and (2) his demotion from assistant principal to teacher did not change his attitude toward school authorities or his job duties. Therefore, the circuit court concluded that "this case offers no hint that [petitioner] had or would be rehabilitated."

Petitioner now appeals. We reviewed the issues before us under the following standards of review:

> When reviewing the appeal of a public employee's grievance, this Court reviews decisions of the circuit court under the same standard as that by which the circuit court reviews the decision of the administrative law judge.
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> "Grievance rulings involve a combination of both deferential and plenary review. Since a reviewing court is obligated to give deference to factual findings rendered by an administrative law judge, a circuit court is not permitted to substitute its judgment for that of the hearing examiner with regard to factual determinations. Credibility determinations made by an administrative law judge are similarly entitled to deference. Plenary review is conducted as to the conclusions of law and application of law to the facts, which are reviewed de novo." Syl. pt. 1, *Cahill v. Mercer Cnty. Bd. of Educ.*, 208 W.Va. 177, 539 S.E.2d 437 (2000).
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> "A final order of the hearing examiner for the West Virginia [Public] Employees Grievance Board, made pursuant to W.Va.Code, [6C–2–1], *et seq*. [ ], and based upon findings of fact, should not be reversed unless clearly wrong." Syl. pt. 1, *Randolph Cnty. Bd. of Educ. v. Scalia*, 182 W.Va. 289, 387 S.E.2d 524 (1989).

Syl. Pts. 1, 2, and 3, *Martin v. Barbour Cty. Bd. of Educ.*, 228 W. Va. 238, 719 S.E.2d 406 (2011).

Petitioner raises two assignments of error on appeal. Petitioner first argues that the circuit court erred in reversing the Grievance Board's decision that granted his grievance against the Board of Education. We disagree and find that the circuit court properly held that the progressive discipline imposed upon petitioner was reasonable and that the ALJ erred in failing to consider petitioner's actions prior to his demotion from assistant principal to teacher in ruling on his

grievance. Because the ALJ considered only petitioner's actions during his four-week tenure as a substitute teacher at Huntington High School, the ALJ erred in finding that petitioner's actions were correctable and that he was entitled to an improvement plan. In fact, as the circuit court found, petitioner's insubordinate actions continued from the 2017-2018 school year into the 2018-2019 school year, impacted the school's safety and security, were willful and intentional, and were not derivative of performance issues. Specifically, petitioner refused to perform his duties and to follow the directives of his supervisors at Huntington Middle School, and his recalcitrant actions continued at Huntington High School. Given this record, the circuit court correctly found that the ALJ erred by refusing to consider petitioner's actions that led to his demotion, and by failing to cite to any precedent for refusing to consider petitioner's pre-demotion actions. Thus, the circuit court correctly ruled that the ALJ failed to follow Grievance Board precedent, which recognizes that when an employee has been notified that his actions are unacceptable, a board of education may terminate the employee's contract if the employee commits similar actions in the future.

For example, in *Phillips v. Boone County Board of Education*, W. Va. Pub. Emps. Grievance Bd., Docket No. 2017-2333-CONS (Jan. 19, 2018), Grievant, Brian Phillips, a teacher was suspended in 2014 without pay for allegedly making inappropriate comments to students. Thereafter, the superintendent allowed the teacher to return to work with no disciplinary action. However, in 2017, the teacher was again accused of making inappropriate comments to students and again suspended him without pay. The Boone County Board of Education considered the teacher's 2014 suspension in accepting the superintendent's recommendation that it terminate the teacher's contract for insubordination and willful neglect of duty. Following his termination, the teacher filed a grievance wherein he argued that (1) the board of education's consideration of his 2014 suspension to support its decision to terminate his employment violated principles of progressive discipline, and (2) any misconduct was correctable. Regarding whether the employee's conduct was correctable, the Grievance Board held that "[i]nappropriate discussions with students concerning their dating habits, and allegations of extra marital affairs by school employees, directly relates to the morals and safety of the students. Additionally, because [Mr. Phillips] was specifically warned about such behavior and chose to do it again, his misconduct constitutes insubordination." *Id.* at *23-24. In light of this finding, the Grievance Board ruled that the board of education "was not required to raise these issues in evaluations, give the grievant an opportunity to improve, nor apply progressive discipline before taking disciplinary action." *Id.* at *24. In the instant appeal, the circuit court correctly held that *Phillips* was applicable and that the ALJ should have followed its reasoning, i.e., the ALJ should have considered petitioner's past actions at Huntington Middle School as well as at Huntington High School in ruling on petitioner's grievance.

When petitioner taught as a substitute at Huntington High School, he knew that failing to comply with directions would not be tolerated. Nevertheless, he willfully chose not to answer his classroom door when the executive director repeatedly knocked on it, and he refused to stay at the professional development session after being told to do so. Like the teacher in *Phillips*, petitioner's insubordinate actions are unrelated to, and not derivative of, his professional performance as a teacher. Thus, petitioner's performance was not correctable. Further, unlike the board of education in *Phillips*, the Board of Education in petitioner's case did impose progressive discipline upon petitioner by issuing a letter of reprimand, by later demoting petitioner from assistant principal to teacher, and, finally, by terminating his contract.

> Progressive discipline is the concept of increasingly severe actions taken by supervisors and managers to correct or prevent an employee's initial or continuing unacceptable work behavior or performance. In theory, progressive and constructive disciplinary action will progress, if required, along a continuum from verbal warning to dismissal, with incremental steps between (i.e. verbal warning, written warning, suspension, demotion, dismissal).

Oliver v. Division of Juvenile Services, Sam Perdue Juvenile Center, W. Va. Pub. Emp. Grievance Bd., Docket No. 2017-2055-MAPS, *6 (Sept. 1, 2017). The progressive discipline imposed upon petitioner gave him clear notice that he was required to follow his superior's directives.

Similarly, in *McComas v. Mercer County Board of Education*, W. Va. Pub. Emp. Grievance Bd., Docket No. 2014-1489-MerED (Oct. 24, 2014), a board of education suspended a substitute teacher for thirty days for falling asleep in class and for failing to properly perform class duties. *Id.* at *5. Later, the substitute teacher was dismissed from employment for willful neglect of duty because he continued to fall asleep in class. The substitute teacher appealed the board of education's decision to the Grievance Board. As it did in *Phillips*, the Grievance Board looked to the substitute teacher's prior disciplinary action to determine whether dismissal from employment was appropriate. The Grievance Board found that "[h]aving been previously suspended for sleeping in class, it should have been crystal clear to [the substitute teacher] that sleeping in class was improper, and would not be tolerated." *Id.* at *15. Accordingly, the Grievance Board upheld the board of education's termination of the substitute teacher's contract. *Id.* at *20.

Here, the ALJ erred in failing to follow the precedent set forth in *Phillips* and *McComas,* which provide that an ALJ may consider an employee's prior disciplinary actions in ruling on a current disciplinary action.

Petitioner also was not eligible for any additional improvement plan. Under State Board of Education policies, a board of education must provide a teacher with an improvement plan if the teacher's actions are deemed correctable. *See Maxey v. McDowell Cty. Bd. of Educ.*, 212 W. Va. 668, 575 S.E.2d 278 (2002).

> [A] board must follow the § 5300(6)(a) procedures if the circumstances forming the basis for suspension or discharge are "correctable." The factor triggering the application of the evaluation procedure and correction period is "correctable" conduct. What is "correctable" conduct does not lend itself to an exact definition but must . . . be understood to mean an offense or conduct which affects professional competency.

Alderman v. Pocahontas Cty. Bd. of Educ., 223 W. Va. 431, 444, 675 S.E.2d 907, 920 (2009) (citing *Mason Cty. Bd. of Educ. v. State Superintendent of Schs.*, 165 W.Va. 732, 739, 274 S.E.2d 435, 439 (1980)). In *Phillips* and *McComas*, the Grievance Board held that because the subject teachers' conduct was not correctable, no improvement plan was required. A critical element of those Grievance Board rulings was that the teachers had been warned about the same or similar conduct. Importantly, in the instant case, the Board of Education gave petitioner more progressive

discipline than the county boards of education at issue in *Phillips* and *McComas* gave to the petitioners in those cases. Specifically, petitioner was issued a reprimand, demoted, and, finally, his employment was terminated.

Moreover, petitioner's insubordinate and neglectful actions were independent of any professional performance issues in the classroom. In *Maxey*, the Court held that a county board of education was required to give a teacher who had been disciplined an improvement plan if the insubordination claim was "derivative of the original performance issue." 212 W.Va. 678, 575 S.E.2d at 288. The facts in *Maxey* are these: a principal, having found that the subject teacher had deficiencies, met with the teacher and asked her to sign an evaluation form. *Id.* at 672, 575 S.E.2d. 282. The teacher did not sign the form stating that she did not understand it. *Id.* The teacher was evaluated a second time and again refused to sign on the evaluation form on the ground that she was not given adequate time to discuss the criticisms in the evaluation before being asked to sign it. *Id.* The principal claimed that the teacher then threw the evaluation on the floor and stomped on it. *Id.* The teacher disputed this claim. *Id.* Thereafter, the teacher's principal, superintendent, and assistant superintendent met with the teacher who claimed she was not given a meaningful opportunity to respond to her alleged issues, that her supervisor were "treating her like . . . an inanimate object," and that she felt like a "cage animal." *Id.* at 673, 575 S.E.2d 283. When the superintendent explained that petitioner was required to sign the evaluation, the teacher said something to the effect that she wished she would have shot the principal. *Id.* at 674, 575 S.E.2d at 284. Thereafter, the superintendent sent the teacher a notice stating that the purpose of the meeting was to address the teacher's (1) behavior and charge of insubordination for throwing the evaluation form on the floor in front of the principal, stomping on it, and refusing to sign it; and (2) "great degree of intemperance including threatening your own life and threatening to shoot [the principal] in the head." *Id.* The notice further provided that, due to the teacher's behavior, she was being suspended for thirty days. Thereafter, the county board ratified the superintendent's recommendation to dismiss the teacher on the basis of intemperance and insubordination. *Id.* at 675, 575 S.E.2d at 285. In response, the teacher filed a grievance, which an ALJ denied. *Id.* On appeal, the circuit court also denied relief. *Id.* However, this Court reversed reasoning that the teacher issues were initially performance-based, and, therefore, "[t]he insubordination claim was derivative of the original performance issue. In other words, the emergence from the performance issue of secondary acts, allegedly constituting insubordination, cannot be held to totally eclipse the underlying performance issues and cannot subvert the employee's right to the protections" under the applicable law. *Id.* at 678–79, 575 S.E.2d at 288–89.

Here, unlike the petitioner in *Maxey*, petitioner's insubordination and his neglect of duty, both as an assistant principal and as a substitute teacher, were primarily related to his actions outside the classroom and, therefore, were not derivative of an original performance issue. Instead, petitioner's misconduct was his pervasive refusal to follow directions. Thus, unlike the teacher in *Maxey*, petitioner's actions were not derivative of his performance as a teacher. Accordingly, the circuit court ruled that the ALJ erred in finding that petitioner's actions were correctable and, therefore, subject to a correction plan under State Board policy. We agree with the circuit court's ruling and, therefore, find that the circuit court did not err in reversing the Grievance Board's decision that granted petitioner's grievance against the Board of Education.

In petitioner's second assignment of error, he argues that the circuit court erred in reversing the Grievance Board's decision because the circuit court failed to identify any reversible error on the Grievance Board's behalf and merely cited different factual interpretations of petitioner's behavior.

We disagree and find that the circuit court did not substitute its factual findings and credibility interpretations for those of the ALJ. As noted above, the ALJ found that the Board of Education failed to persuasively establish that petitioner's *post-demotion* conduct "demonstrated lawful cause for termination of his employment as a full-time teacher." However, in making that finding, the ALJ ignored all of petitioner's pre-demotion acts, i.e., petitioner's problematic acts when he served as an assistant principal at Huntington Middle School. The circuit court recognized this error and rightfully considered petitioner's pre-demotion behavior (which was made part of the record in petitioner's second grievance), in addition to his post-demotion behavior. In light of that substantial evidence, we find that the circuit court did not err in reversing the ALJ's decision.

Petitioner also argues that the circuit court substituted its credibility determinations for those of the ALJ. We disagree. Nowhere in the order on appeal does the circuit court address the ALJ's credibility determinations or find that those determinations are erroneous. Instead, the circuit court reversed the ALJ's decision based on the ALJ's application of law to the facts and errant conclusion that a board of education may not consider an employee's employment history and/or prior disciplinary actions in determining whether the discipline imposed was reasonable and proper. Here, petitioner's discipline was reasonable and proper given that, both as an assistant principal and as a teacher, he willfully neglected his duties and was insubordinate. West Virginia Code § 18A-2-8(a) provides:

> Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, *insubordination*, intemperance, *willful neglect of duty*, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with § 49-1-1 et seq. of this code, the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(Emphasis added.) Thus, we find no error.

Accordingly, for the foregoing reasons, we affirm the circuit court's July 22, 2020, order upholding respondent's termination of petitioner's employment as a teacher.

Affirmed.

ISSUED: January 12, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice Evan H. Jenkins
Justice William R. Wooton